

Umesh Rai Vs. Renu Devi and Anr

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Court : Jharkhand

Decided On : Jun-16-2015

Appellant : Umesh Rai

Respondent : Renu Devi and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No. 260 of 2014 Umesh Rai, Son of Late Suba Rai, resident of village Kosogondodighi, PO-Chatro, PS- Deori, District- Giridih . Petitioner(s) -V e r s u s- 1. Renu Devi, wife of Umesh Rai, daughter of late Beni Rai 2. Rahul Kumar, son of Umesh Rai (minor) through his natural mother and guardian namely Renu Devi Both residents of village and PO- Nawa Ahar, PS Deori, District-Giridih Opposite Parties
CORAM: - HONBLE MR. JUSTICE RAVI NATH VERMA For the Petitioner(s) : - Mr. A.K.Sahani, Advocate For the Opp.Parties :- Mr. Vijay Kumar Roy, Advocate
CAV on 13.05.2015 Delivered on 16/06/2015 Challenge in this revision application is to the order dated 03.02.2014 passed by the Principal Judge, Family Court, Giridih in Maintenance Case No. 88 of 2010, whereby and whereunder the petitioner has been directed to pay a sum of Rs.2,000/-(two thousand) per month as maintenance to his wife- opposite party no.1 Renu Devi and a sum of Rs.1,000/-(one thousand) per month to his minor son-opposite party no.2 Rahul Kumar from the date of filing of the maintenance petition under Section 125 of the Code of Criminal Procedure (in short the Code) and further directed to pay the aforesaid amount regularly by the 10th day of every succeeding month,.

2. At the instance of the present opposite party nos. 1 and 2, a petition under Section 125 of the Code was filed in the court of the Principal Judge, Family Court, Giridih on the allegation that the opposite party no.1 is the legally married wife of the present petitioner and the marriage between them was solemnized about 10 years ago and from their wedlock, the present opposite party no.2 was blessed but after sometime, the petitioner along with his family members started demanding dowry and due to non-fulfillment of their demand, she was subjected to physical and mental torture and ultimately, she was driven out from her Sasural and even she was brutally assaulted and her husband and in-laws snatched all her belongings. It is also alleged that the petitioner solemnized second marriage with a lady Rekha Devi and from his second wife, he has three children. Whereafter, a case under Section 498-A of I.P.C. was filed, which is still pending and thereafter the present case for grant of maintenance was filed as the petitioner refused to maintain her though he has got sufficient means and is earning Rs.6,000/- per month as Confectioner and Sweet maker and has also income of Rs.20,000/- per annum from agriculture. 2 3. It appears from the impugned order that after notice, the petitioner appeared in the court below and filed his show cause admitting the marriage with the present opposite party no.1 but denied to maintain her on the ground that he is still ready to keep the opposite party no.1 and her minor son with full dignity and honour. In the show cause, it is also stated that the opposite party no.2 knowingly and intentionally left her Sasural and company of this petitioner and she cannot take advantage of her own wrong by not coming back to the house of this petitioner and further denied that he earns handsome income from confectionery work and from agriculture rather he is working as a Daily Labour in his village for his own survival and for survival of his second wife and three children and the old mother. Both parties adduced their respective oral evidences, whereafter the court below after scrutinizing the evidence available on record, directed the petitioner to pay the maintenance as indicated above. Hence, this revision.

4. Assailing the order impugned, Mr. Sahani, learned counsel appearing for the petitioner, submitted that the court below without appreciating the evidence adduced on behalf of the petitioner in right perspective rather in mechanical way directed this petitioner to pay the maintenance to opposite party nos. 1 and 2

though it has come in the evidence that the petitioner is working as a Labour. There is no proper consideration of the evidence and in absence of any documentary proof of income, the order impugned cannot sustain in the eyes of law.

5. Contrary to the above submissions, Learned counsel for opposite parties submitted that in view of Section 106 of the Evidence Act, the burden of proving the income or the onus was upon the present petitioner but he failed to bring even a chit of paper before the court below or any positive evidence of his income.

6. After having heard the counsels and upon going through the order impugned, I find that the petitioner has not denied the factum of marriage between the parties and has not brought any evidence to show that the opposite party no.1 left her matrimonial house with her own sweet Will and he had taken any step to bring her back rather it appears from the evidence as discussed in the order impugned that he solemnized his second marriage, whereafter a case under Section 498-A of I.P.C. was filed. The petitioner has also not denied that opposite party no.2 was not born after his conjugal relation with the opposite party no.1. Admittedly, both parties are living separately. On the point of income of the petitioner, there is a clear averment of the opposite party no.1 and other witnesses that this petitioner is earning Rs.6,000/- per month from confectionary work. However, the petitioner has denied the income 3 but no positive evidence has been brought from his side except the testimony of one or two witnesses though the onus to prove this fact was upon him in view of Section 106 of the Evidence Act, which clearly speaks that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. What I find from the order impugned is that the court below has granted a very meager amount, which in the present time, is not sufficient to cater the needs of two persons. Hence, the grant of maintenance of Rs.2,000/- and Rs.1,000/- cannot be said to be excessive by any parameter.

7. Thus, I do not find any illegality and/or irregularity in the order impugned passed by the court below worth interference in the revisional jurisdiction. Learned counsel for the petitioner has also not pointed out any cogent ground to interfere with the order impugned.

8. Since, there is no merit in this application, the same is, accordingly, dismissed.
(R. N. Verma, J.) Jharkhand High Court, Ranchi Dated the 16th June, 2015 Ritesh
/ NAFR

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